



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2023-0187

RIN 1625-AA09

Drawbridge Operation Regulation; Black River, Lorain, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Charles Berry Bridge, mile 0.6, and the Norfolk Southern Railroad Bridge, mile 1.2, both over the Black River. The regulation has not been updated since 1986. The Coast Guard’s proposed revisions will ensure the needs of all modes of transportation are being met.

**DATES:** Comments and relate material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2023-0187 using Federal Decision-Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail If you have questions on this temporary final rule, call or e-mail Mr.

Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

## SUPPLEMENTARY INFORMATION:

### I. Table of Abbreviations

CFR	Code of Federal Regulations
CRSTF	Cuyahoga River Safety Task Force
DHS	Department of Homeland Security
FR	Federal Register
IGLD	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
OMB	Office of Management and Budget
PAWSA	Ports and Waterway Safety Assessment
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

### II. Background, Purpose, and Legal Basis

The Black River is a tributary of Lake Erie, created at the confluence of the east and west branches of the Black River at Elyria, Ohio. It then travels 12 miles to empty into Lake Erie at Lorain, Ohio. Large commercial vessels and powered and non-powered recreational vessels use the river. Most of the recreational vessels using the waterway moor in the outer harbor basin or launch from one of the two municipal boat ramp locations. The head of navigation is located at approximate river mile 3, just past the former U.S. Steel Dock on the south side of Lorain. The river continues to Elyria, Ohio with water depths reported less than 6-feet based on LWD. There are no detours available for vessels to avoid passing through the bridges.

Three bridges cross the river at Lorain, two drawbridges and one fixed. The Charles Berry Bridge, mile 0.6, is a double leaf bascule bridge that provides a horizontal clearance of 148-feet and a vertical clearance of 33-feet at center above LWD in the closed position and an unlimited clearance in the open position. The Norfolk Southern Railroad Bridge, mile 1.2, is a vertical lift bridge that provides a horizontal clearance of 205-feet and a vertical clearance of 35-feet in the closed position above LWD and 123-

feet in the open position above LWD. The Lofton Henderson Memorial Bridge, mile 2, is a fixed bridge that provides a horizontal clearance of 256-feet and a vertical clearance of 97-feet based on LWD.

The Charles Berry Bridge, mile 0.6, is governed by 33 CFR 117.850, allowing the bridge to only open twice an hour and operate in evenings with a 2-hour advance notice. The Norfolk Southern Railroad Bridge, mile 1.2, does not have operating regulations.

### III. Discussion of Proposed Rule

On August 7, 1986, we published in the Federal Register (51 FR 28380), on request of the Lorain County Engineer, to limit bridge movements and prevent traffic congestion at the bridge. In the intervening 37 years, several riverfront businesses that received maritime traffic have closed and/or been removed, to include two steel mills at the head of navigation, an iron ore terminal, a coal fired power plant, and Ford Lorain Assembly Plant. These changes have impacted traffic at the Charles Berry Bridge, mile 0.6, reducing the number of vessels visiting the harbor and reducing the number of workers traveling to and from work over the bridges.

According to the Ohio Department of Transportation Data Management System, since 1986, vehicle crossings at the Charles Berry Bridge, mile 0.6, have decreased year over year. In 2022, the annual daily average vehicle crossing was 2,161 vehicles, a decline of almost 45% in vehicle crossings since 1986.

The Charles Berry Bridge, mile 0.6, provides 33-feet of vertical clearance above LWD and the current regulation requires the bridge to open on signal for commercial vessels. Accordingly, the only vessels the regulation restricts is the sailing population. Arguably, the Coast Guard should have amended the regulations after the lakeside marina opened in 1989, moving most of the recreational vessels, including sailing vessels, from the docks in the Lorain River to the harbor north of the bridges.

The primary purpose of the current bridge regulation was to prevent vehicle congestion at the bridge. However, with the reduction of vehicles and vessels transiting the river on a regular basis, the calculus has shifted, and the Coast Guard proposes to revise the regulation to remove the burden from the recreational vessels using the waterway.

We are proposing to remove the restricted bridge opening times of on the hour and half hour. We also propose to remove the restrictions of 8 a.m., 3 p.m., 4 p.m., and 5 p.m. because the traffic counts do not support a significant gathering of vehicles at the bridge during those times.

We informally asked local stakeholders for comments, and we received one comment requesting to keep the current winter operations as written.

In 2022, the Coast Guard received three reports of the drawtender delaying the opening of the bridge: two reports against the highway bridge and one against the railroad bridge; all three delays have been attributed to communications problems. The Coast Guard hopes that it can resolve the communications issue by proposing that both movable bridges operate a Radio Telephone and telephone. Both bridges would be required to post these requirements with winter hours at the bridge under § 117.55.

## V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a

“significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action is not significant since it removes the burdens placed on the boaters.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

## F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0187 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using

<https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117  
Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and DHS Delegation No. 00170.1,  
Revision No. 01.3.

2. Revise § 117.850 Black River to read as follows:

(a) The Charles Berry Bridge, mile 0.6, will open on signal, except from January



1 through March 31 when the bridge will open if a 12-hour advance notice is given. The bridge will operate and maintain a VHF-FM Marine Radio and a telephone number.

(b) The Norfolk Southern Railroad Bridge, mile 1.2, will open on signal, except from January 1 through March 31 when the bridge will open if a 12-hour advance notice is given. The bridge will operate and maintain a VHF-FM Marine Radio and a telephone number.

M. J. JOHNSTON

Rear Admiral, U.S. Coast Guard,

Commander, Ninth Coast Guard District

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